



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: June 5, 2014

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary
Sandy Chalmers, Administrator, Trade and Consumer Protection Division

SUBJECT: **Ch. ATCP 127- EMERGENCY RULE;** Direct Marketing; Subchapter V --
Telephone Solicitations; No-Call List (Scope Statement)

PRESENTED BY: Michelle Reinen and Staff

REQUESTED ACTION:

At the June 12, 2014, Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a "Statement of Scope" (copy attached) for the promulgation of a DATCP emergency rule related to Direct Marketing-- Telephone Solicitations; No-Call List. This emergency rule is necessary to implement recent changes to s. 100.52 of the Wisconsin Statutes.

A scope statement spells out the general purpose and scope of a proposed rule. DATCP may not begin drafting a proposed rule (including a proposal to amend or repeal an existing rule) until the Governor approves a scope statement for the proposed rule and the DATCP Board approves the scope statement. In accordance with 2011 Wisconsin Act 21 (s. 227.135(2), Stats.), the Governor approved this scope statement for an emergency rule on May 14, 2014, thereby allowing DATCP to submit this scope statement for publication and to seek approval of the scope statement by the DATCP Board.

DATCP must publish a draft scope statement in the Wisconsin Administrative Register, and file a copy with the Department of Administration (DOA), at least 10 days before the Board approves the scope statement. DATCP filed the attached statement of scope with the Legislative Reference Bureau for publication in the May 31, 2014 issue of the Wisconsin Administrative Register. DATCP also filed a copy with DOA.

The proposed emergency rule is a temporary rule change. An emergency rule goes into effect after it has been approved by the Secretary and the Governor and published in the state newspaper. If the Board approves the attached scope statement related to the emergency rule, then the Department will begin drafting the emergency rule. Once the rule is approved by the Secretary and Governor, it will be published in the state newspaper and become effective on the date of publication. An emergency rule remains in effect for 150 days. DATCP may request that the Joint Committee for Review of Administrative Rules (JCRAR) extend the length of time the emergency remains in effect for an additional 120 days.

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STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Ch. ATCP 127, Wis. Adm. Code (Existing)

Relating to: Direct Marketing (Subchapter V: Telephone Solicitations; No-Call List)

1. Description of the objective of the rule:

This emergency rule will modify current direct marketing rules related to telephone solicitations and Wisconsin's no-call list. The emergency rule will implement 2013 Act 234, which revised s. 100.52 Wis. Stats. and requires DATCP to establish registration requirements for telephone solicitors, including requirements for proof of registration with the Federal Trade Commission (FTC).

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

History and background. The no-call regulation is widely considered to be one of the state's most popular laws. While the statute was enacted in 2001, the rule took effect at the end of 2002. The law allows residents to register home and mobile phone numbers every two years on the Wisconsin no-call list, requires telephone solicitors to register with the state to obtain the list, and prohibits calls from most telemarketers to numbers on that list. DATCP enforces violations of the law. The Federal Trade Commission (FTC) also has a federal do-not-call registry; residents can register their numbers on that list permanently. Telephone solicitors must register with the FTC to receive the list and are prohibited from calling numbers on the list. The FTC and DATCP can enforce violations of the federal do-not-call registry.

2013 Act 234 eliminates the separate Wisconsin do-not-call list as of August 1, 2014. Wisconsin residents will now only sign up on the FTC list. All phone numbers on the existing Wisconsin do-not-call list will be transferred to the FTC list. Under the new state law, telephone solicitors must register with the FTC and obtain and follow the Wisconsin portion of the federal do-not-call list. Solicitors must continue to register with DATCP. As part of that registration, they must provide proof of registration with the FTC. DATCP will continue to administer and enforce the law.

Nature of the Emergency. An emergency rule is necessary because the statute requires the department to create registration requirements that include proof that telephone solicitors are registered with the FTC and are obtaining the Wisconsin portion of the national do-no-call registry. The statute takes effect August 1, 2014, so the requirements must be adopted into rule by then and there is not time to complete the permanent rulemaking process by that date.

Proposed policies. Under the emergency rule, DATCP will modify Subchapter V of ATCP 127, Wis. Admin. Code to establish registration requirements for telephone solicitors, including what information telemarketers must provide to prove they are obtaining and using the Wisconsin portion of the federal do-not-call registry, as required by 2013 Act 234.

Policy Alternative. Do nothing. This option is not feasible because the new law is effective August 1, 2014 and the department is required by statute to adopt registration requirements for telephone solicitors that provide proof that telephone solicitors have obtained and are using the Wisconsin portion of the federal do-not-call registry.

3. Statutory authority for the rule (including the statutory citation and language):

Sections 93.07 (1), 100.20 (2) and 100.52 (3), Stats.

93.07 Department duties. It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

* * *

100.20 Methods of competition and trade practices

(2) (a) The department, after public hearing, may issue general orders forbidding methods of competition in business or trade practices in business which are determined by the department to be unfair. The department, after public hearing, may issue general orders prescribing methods of competition in business or trade practices in business which are determined by the department to be fair.

* * *

100.52 (3) Registration of telephone solicitors.

The department shall promulgate rules that require any telephone solicitor who requires an employee or contractor to make a telephone solicitation to a residential customer in this state to register with the department, obtain a registration number from the department, and pay an initial registration fee and an annual registration renewal fee to the department. The amount that an individual telephone solicitor is required to pay shall be based on the number of telephone lines used by the telephone solicitor to make telephone solicitations or some other methodology established by the department by rule. The rules shall also require a telephone solicitor that registers with the department to at the time of initial registration, the time of annual renewal, and any other time upon request of the department, provide the department with proof that the telephone solicitor has complied with federal law in obtaining copies and updated versions of the state do-not-call registry. The amount of the fees shall be based on the amount required to administer and enforce this section and to provide the amounts appropriated under s. 20.115 (1) (im).

4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

DATCP estimates that it will use approximately 0.25 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

5. Description of all entities that may be impacted by the rule:

Telephone solicitors will be impacted by the emergency rule. Telephone solicitors are required to be registered by both DATCP and the FTC. The emergency rule will amend state registration requirements to include proof of registration with the FTC.

The emergency rule will also impact Wisconsin residents who are currently registered on the Wisconsin or FTC no-call list or wish to be. This rule will help ensure telemarketers are properly registered with the FTC and that DATCP is able to enforce the law effectively and efficiently.

6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:

At the national level, the FTC administers a do-not-call registry. As a result of 2013 Act 234, Wisconsin residents will now permanently sign up on the FTC list and telephone solicitors will be required to use the Wisconsin portion of the FTC registry rather than a separate DATCP-generated list. Telephone solicitors also must register with DATCP and will have to provide proof of their federal registration number as part of state registration. The FTC do-not-call registry is used by all surrounding states.

7. Anticipated economic impact

The emergency rule will have no economic impact.

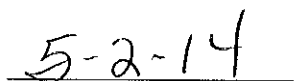
Contact Person: Jennifer Heaton-Amrhein, Program and Policy Analyst, DATCP; Phone (608) 224-5164



Ben Brancel

Secretary

Department of Agriculture, Trade and Consumer Protection



Date Submitted